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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,122	02/19/2002	Donna Khazan-Enache		6777

7590 10/06/2003

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EXAMINER

WARE, DEBORAH K

ART UNIT PAPER NUMBER

1651

DATE MAILED: 10/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/079,122

Applicant(s)

KHAZAN-ENACHE, DONNA

Examiner

Deborah K. Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims 1-13 are presented for examination on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-13 are rendered vague and indefinite for failing to clearly claim the process preamble of claim 1 wherein the language "What I claim as my invention is" is superfluous and confusing and should be deleted, and the preamble should merely begin with --A--. Also the claimed process fails to recite clear and distinct process steps. It is unclear whether Applicants desire to claim a composition or a process, or whether the claim is directed to a product by process. The claimed invention perhaps is most likely a product by process, however, this is unclear. There appear to be no process steps required of claim 1, per se. Also the language "chosen from the group consisting of" is unclear with respect to the language used for the components because it is unclear what compounds are in the group. The metes and bounds of the claim can not be determined. Also the phrase "wherein the repellent compound ... used, ..., "etc. is verbose and confusing as well. Thus, it is suggested to merely state --wherein the

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repellent compound is fragranced and further is not toxic to humans, animals or an environment. Also the phrase "the environment" lacks antecedent basis in the claim. It is further suggested that Applicant change the claim 1 to a product claim only rather than having it read on a process since there are no clear and distinct process steps. In addition, all of the dependent claims appear to read on the composition of the process. Also Applicant's claim 13 is directed to a method of using the composition, and thus, claim 1 would serve better as an independent product claim rather than a process claim, especially since there appear to be no process steps or at least any that would differ substantially from claim 13 other than in scope. Also claim 4-5 are confusing for what appears to be the duplicative recitation of "wherein present in the insect repellent compound is present in the ..." etc. It is unclear what this means in the claim or how the claim is to be interpreted in terms of what is present in the composition? The metes and bounds of the claim can not be determined.

Also in claim 9, the recitation of "The slow-release insect repellent composition", lacks antecedent basis in the claim at line 1. Further, claim 10 recites "comprises" at line 1 which is confusing as to what other substrates are comprised which may be outside the Markush Group of claim 9. Thus, it is unclear whether claim 10 would patentably limit claim 9. Thus, "comprises" should be deleted and —is—is suggested to be inserted therein as an alternative. Further, claim 11 appears to read on a composition but it is reciting no limitations for the composition but providing what may be intended to be process steps, however, this is unclear in the claim. Also it is unclear in the claim 11 what is being dried? The metes and bounds of claim 11 can not be

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determined. Claim 13 is further rendered vague and indefinite for failing to recite clear and distinct process steps. Also the language "and/or in any other closed storage unit" is unclear as to what exactly is intended by this meaning, especially since a "closed storage unit" can read on a cold storage device, etc. The metes and bounds of the claims can not be determined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Marsi

(A).

Claims are being treated as a strict composition for purposes of this rejection because claims appear to read only on a composition. The composition contains an essential oil, such as citronella, agents and a solvent.

Marsi teaches a composition containing an essential oil, such as orange oil (i.e. citronella oil), agents and solvent. Note col. 1, lines 5-60. Also note col. 2, lines 1-5.

The claims appear to be identical to the cited disclosure and are therefore, considered to be anticipated by the teachings of the cited reference.

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Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Munagavalasa (B).

Claim is drawn to a method for repelling moths comprising placing a repellent composition in a closed storage unit.

Munagavalasa teaches the same, see abstract and col 1, lines 10-15, col. 4, lines 15-20 and lines 58-60, col. 9, lines 10-11, and col. 12, lines 5-20.

The claim appears to be identical to the cited disclosure and therefore, considered to be anticipated by the teachings of the cited reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marisi in view of Munagavalasa cited as A and B above and on the PTO-892 Form.

Claims drawn to a composition as discussed above.

Marisi and Munagavalasa are also discussed above.

However, additionally note Marisi teaches at col. 8, lines 35-40 various percentage amounts of each ingredient for the composition.

The claims differ from Marisi in that the claims are drawn to treating moths with the composition and Marisi does not teach moths but does teach treating other flying insects, note col. 2, example 3, last few lines.

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It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the composition of Marisi to the moths of Munagavalasa, since Marisi clearly teach treating flying insects. Moths are flying insects. One of skill in the art would have expected successful results for using the composition of Marisi on moths disclosed by Munagavalasa. Moths are attracted to paper, pellets and shells as well as other dry goods. Oils, solvents and agents are clearly taught to be combinable. The oil acts as a carrier as disclosed by Marisi and would have been expected to provide slow release. To vary percentage amounts within the ranges disclosed by Marisi is clearly an obvious modification. To select for other fragrant agents like geraniol and vanillin is within the skill of an artisan. Acetic acid and citric acid are taught, or at least suggested by the cited prior art. To contact the substrate is within the skill of an artisan and to let dry for a period of time at a selected temperature is a matter of judicious selection and within the purview of an artisan. Claims are clearly prima facie obvious over the cited prior art.

Claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

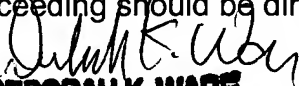
No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 308-4245. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0196.


DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware
September 25, 2003